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September 15, 2011

VIA ECF FILING & BY FAX

The Honorable Nicholas G. Garaufis
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

The Honorable James Orenstein
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

*In re Application of Debbie Gushlak for an Order Pursuant to 28 U.S.C. §1782
MC-11-218(NGG)*

Dear Judge Garaufis and Magistrate Judge Orenstein:

We write as counsel to Applicant Debbie Gushlak. We seek, pursuant to Judge Garaufis' Rule III.A.2, a pre-motion conference in advance of a motion to hold Yelena Furman in contempt for her refusal to produce documents in response to a subpoena served upon her by order of this Court and her anticipated refusal to appear for deposition. We seek to join the motion with the motion we previously requested permission to make to hold Myron Gushlak in contempt for his similar refusal to produce documents or to appear for deposition. [Dkt. No. 56]. That request has now, by Order dated September 15, 2011, been referred to Magistrate Judge Orenstein for a report and recommendation and, if necessary, a hearing. [Dkt. No. 62]. By Docket Entry dated September 14, 2011, Judge Orenstein has scheduled a conference for September 26, 2011, at which we assume the request concerning Myron Gushlak will be addressed. We ask to add to that agenda our request to move against Miss Furman.

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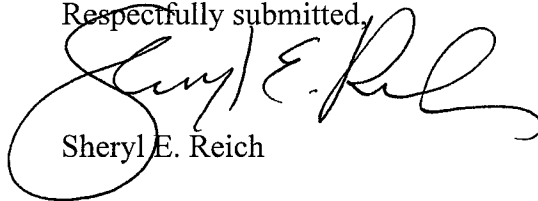
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As with Mr. Gushlak, Miss Furman takes the position that she is exempt from compliance with the discovery orders because she has filed a notice of appeal of the decision granting Mrs. Gushlak's request to take discovery from her. As with Mr. Gushlak, she singularly cites to *Chevron Corp. v. Berlinger*, 629 F.3d 297, 305, 2011 U.S. App. LEXIS 629; 39 Media L. Rep. 1129 (2d Cir. 2011), to support the position that a stay is automatic. We are obliged once again to point out that unlike Mr. Gushlak or Miss Furman, Mr. Berlinger sought a stay pending appeal, and a stay was entered by the Second Circuit motions' panel. Thus, the case upon which they both rely not only fails to authorize a witness who has been ordered to comply with discovery under 1782 to chose to ignore the service of process, but it counsels that a stay is required in order to avoid compliance while an appeal is pending.

Despite having been told that the law does not grant an automatic stay, and neither witness has sought or been granted a stay of discovery, each contends that no compliance is required. While Miss Furman is in a slightly different position on appeal,¹ her failure to obtain a stay of discovery makes her refusal to comply with the discovery equally contumacious.

For these reasons, we ask to move for an order of contempt against Miss Furman and specifically request that the matter be referred to Magistrate Judge Orenstein for consideration at the September 26, 2011, conference.

Respectfully submitted,



Sheryl E. Reich

¹ Unlike Myron Gushlak, who seeks to appeal the order allowing the administrative service of a subpoena on him but never challenged the decision, Miss Furman purports to appeal from the denial of her opposition to the grant of discovery.